

The role of the Internet and international Internet-related public policy in mitigating the impact of COVID-19 and possible future pandemics

CWG February 2021

Introduction

ARTICLE 19 welcomes the efforts of the ITU to engage in a multistakeholder process by holding this Open Consultation of the Council Working Group on Internet-Related Public Policy Issues (CWG-Internet) on the role of the Internet and international Internet-related public policy in mitigating the impact of COVID-19 and possible future pandemics. We appreciate the opportunity to provide the Working Group with our position on the topic and look forward to the following discussions.

ARTICLE 19 is an international human rights organization that works to protect and promote the right to freedom of expression. With regional offices in East Africa, West Africa, South Asia, East Asia, Europe, Central America, South America, and MENA, we champion freedom of expression at the national, regional, and international levels. The work of ARTICLE 19's Digital Programme focuses on the nexus of human rights, Internet infrastructure, and Internet governance. We actively participate in forums across the Internet governance and standards landscape, including the Internet Corporation of Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the Institute of Electrical and Electronics Engineers (IEEE), and the Internet Governance Forum (IGF).

The COVID-19 pandemic has demonstrated that Internet-related public policy development that focuses on closing the digital divide remains a pressing issue that must be meaningfully addressed by Member States, as the state of Internet connectivity fundamentally impacts access to information that is critical during public health emergencies. However, we recognize two major problems in current policy approaches that must be addressed. First, many of the Internet-related emergency measures taken by Member States in response to the COVID-19 pandemic, such as the allocation of additional spectrum to large telecommunication companies, have fallen short of addressing the root causes of the digital divide, and may even further entrench them. Second, while the COVID-19 pandemic has placed the issue of the digital divide back to the fore in the ITU and other multilateral spaces, several Member States have approached connectivity discussions by raising cybersecurity issues in ways that detract from the matter of increasing access to vital and relevant information. We set out these issues in this contribution and provide recommendations to Member States. Specifically, we recommend that Member States should commit to focusing the ITU's work on universal connectivity, in line with its mandate, that emergency Internet-related policy measures should be designed to take into consideration a broader ecosystem of Internet service providers, and that national cybersecurity responses should be designed in line with international human rights standards.

Problem 1: Emergency spectrum management responses during the COVID-19 pandemic do not support universal connectivity.

Universal connectivity has been a focus of the international community for three decades; however, the digital divide, in its many forms, remains a reality¹. According to the ITU, 49% of the population is still not connected to the Internet². By the start of the COVID-19 pandemic, half of students worldwide did not have a computer, and only 43% had fixed Internet at home³.

Over the last 18 months, the Internet has proven its importance as a tool for mitigating information gaps during public health crises and the impacts of social distancing in almost every aspect of people's lives. It is therefore unsurprising that guaranteeing Internet service has been the core intention of Internetrelated emergency measures adopted by many governments during the pandemic. The ITU has also participated in this effort, launching a platform and a series of guidelines to assist governments and the private sector in ensuring that networks are resilient and telecommunication services remain available⁴. In particular, the primary measure taken by governments as part of their Internet-related emergency responses has been the temporary allocation of additional spectrum to traditional telecommunication operators - a measure also recommended by the ITU, together with the World Bank, World Economic Forum, and GSMA⁵.

While it may appear that this type of measure would be effective, evidence suggests that this policy approach will not actually result in benefits to people that are currently unconnected or under-connected. Although the increase in Internet traffic was significant during the first months of the pandemic, it has since stabilized to pre-pandemic levels in most countries⁶. Access to more spectrum would certainly be useful to operators that must accommodate outsized levels of traffic on their existing networks; however, the data shows that it is no longer necessary. At the same time, the global rollout of telecommunication infrastructure has been slowing down since 2019⁷. As such, it does not appear that additional spectrum resources for traditional network operators would be used to support the capacity needs of expanded networks in communities where infrastructure was not previously present.

https://es.unesco.org/news/surgen-alarmantes-brechas-digitales-aprendizaje-distancia

⁴ ITU 2020. Launch of a global platform to help protect telecommunication networks during the COVID-19 crisis https://www.itu.int/en/mediacentre/Pages/STMNT01-2020-global-platform-telecommunication-COVID-19.aspx; ITU 2020, COVID-19 Response and recovery https://www.itu.int/en/Pages/covid-19.aspx

⁵ ITU 2020, First Overview of key Initiatives in Response to Covid-19 https://www.itu.int/en/ITU-D/Regulatory-Market/Documents/REG4COVID/2020/Summary_Key_Covid19_Initiatives.pdf; GSMA 2020, Covid-19 Mobile for development updates and guidance https://www.gsma.com/mobilefordevelopment/covid-19-mobile-fordevelopment-updates-and-guidance/; GSMA 2020 Covid-19 Industry updates and guidance https://www.gsma.com/newsroom/covid-19-industry-updates-and-guidance/; ITU, GSMA, World Forum and World Bank, 2020. Joint Action Plan and Call for Action Report. https://www.gsma.com/betterfuture/wpcontent/uploads/2020/05/Digital-Development-Joint-Action-Plan_Call-for-Action-Report-2020.pdf

⁶ Internet Performance trackers since the beginning of the Covid-19 pandemic: https://www.speedtest.net/insights/blog/tracking-covid-19-impact-global-internet-performance/#/ https://www.netscout.com/blog/Network-Traffic-in-the-Age-of-COVID-19https://ec.europa.eu/digital-singlemarket/en/news/reports-status-internet-capacity-during-coronavirus-confinement-measures https://ooni.org/post/2020-network-performance-covid19-italy/

¹ ITU News n.3 2015. ITU, 150 years of Innovation https://www.itu.int/bibar/ITUJournal/DocLibrary/ITU011-2015-03-en.pdf ² ITU Statistics 2019_https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx

³ Unesco and ITU 2020. Surgen alarmantes brechas digitales en el aprendizaje a distancia

⁷ ITU Facts and Figure 2021 <u>https://www.itu.int/en/ITU-D/Statistics/Dashboards/Pages/IFF.aspx</u>

Not only do these spectrum policy approaches fail to address acute connectivity needs during the COVID-19 pandemic, they further entrench the long-term digital divide. Historically, efforts to expand connectivity have focused on building partnerships between governments and large, incumbent telecommunication service providers that operate according to traditional business models. These business models are premised on prioritizing connections for people in areas that will generate the greatest profit and returns on infrastructural investment; as a result, poor, rural, and remote communities, where distances are longer to connect to centers or between communities and deployment costs are higher, continue to be the most unconnected or under-connected⁸. By increasing spectrum allocations to traditional telecommunication operators, governments are reproducing the same approach that has thus far failed to meet the goals of universal connectivity for decades.

Communities that do not represent an attractive market for traditional telecommunication companies require innovative approaches to address their connectivity needs. In recent years, the massification and price reduction of ICT equipment, as well as technological advances in spectrum sharing⁹, have enabled the existence of alternative Internet service models. These small, community, and non-profit operators can complement incumbent operators by connecting areas that are considered prohibitively unprofitable under traditional business models and providing local services that may even encourage greater Internet adoption by overcoming language, cultural, and knowledge barriers. There is mounting evidence that shows the benefit of innovative spectrum policy approaches that are inclusive of small, community, and non-profit operators¹⁰, and recent research has shown how these alternative networks have helped to keep underserved communities connected during the COVID-19 pandemic¹¹.

However, these operators have struggled to remain active due to the lack of technical support and financial sustainability¹². Moreover, the uncertainty of how and when the pandemic will be contained creates a situation in which even temporary spectrum allocation measures taken under emergency circumstances may become permanent by default. As a result, unused spectrum that is much needed by small, community, or non-profit operators will instead be concentrated in the hands of traditional

https://manypossibilities.net/2015/04/how-to-let-gsm-serve-the-people-that-other-networks-cant-reach/ ISOC 2017. Spectrum approaches for Community Networks https://www.internetsociety.org/wp-

content/uploads/2017/10/Spectrum-Approaches-for-Community-Networks_20171010.pdf

Belli, L. 2019 Building Community Network policies. A collaborative governance towards enabling frameworks. https://comconnectivity.org/wp-content/uploads/2020/05/building_community_network_policies

a_collaborative_governance_towards_enabling_frameworks.pdf; ISOC, APC and Mozilla 2019. Innovations in spectrum management. https://www.internetsociety.org/wp-

⁸ Telecommunications Journal of Australia 59(2), July 2009. Ellershaw, Riding; Stumpf and Lee. Deployment costs of rural broadband technologies

https://www.researchgate.net/publication/247858537 Deployment costs of rural broadband technologies: Song, Steve 2015. How to let GSM serve where other can't reach https://manypossibilities.net/2015/04/how-tolet-gsm-serve-the-people-that-other-networks-cant-reach/

Alliance for Affordable Internet, 2020. Mobile Broadband Pricing/Cost of 1GB data in USD/Affordability per % average income https://a4ai.org/extra/baskets/A4AI/2020/mobile broadband pricing gni ⁹ ISOC 2019, Innovations in Spectrum Management

https://www.internetsociety.org/resources/doc/2019/innovations-in-spectrum-management/

¹⁰ OECD (2014), "New Approaches to Spectrum Management", OECD Digital Economy Papers, No. 235, OECD Publishing, Paris, https://doi.org/10.1787/5jz44fng066c-en.

Song, S. 2015 How to let GSM serve the people that other networks can't reach

content/uploads/2019/03/InnovationsinSpectrumManagement_March2019-EN-1.pdf ¹¹ ISOC 2020. How community networks are helping during Covid-19 <u>https://www.internetsociety.org/events/how-</u> community-networks-are-helping-during-covid-19/

¹² APC 2020 Community networks in the Americas' Region <u>https://www.apc.org/en/news/community-networks-</u> and-covid-19-americas-region

telecommunication operators. The Internet-related public policy strategies that are developed by governments during the COVID-19 pandemic must be part of a larger plan that broadens spectrum access to a more diverse set of actors in the Internet service ecosystem to ensure greater connectivity in the long-term and better preparedness for the next emergency.

The ITU can play a significant role in the development of more innovative and inclusive Internet-related public policy approaches to address connectivity, given that connecting the unconnected is at the heart of its mandate. The ITU-D has already made efforts to open a dialogue with external partners to discuss how universal connectivity could be achieved as part of its next quadrennial program, which will be agreed at the upcoming World Telecommunication Development Conference (WTDC) in 2021¹³. The work of its study groups on spectrum management issues should be part of these high-level strategies; at the same time, study group work should focus on concrete, evidence-based actions to close the digital divide, including support for small, community, and non-profit operators. Indeed, the work of the ITU should first and foremost focus on expanding universal connectivity as part of any action to mitigate the current and possible future pandemics.

Problem 2: Current approaches to cybersecurity in Internet-related public policy responses to the COVID-19 pandemic may undermine access to information

The issue of cybersecurity has gained progressive visibility during the COVID-19 crisis, as the abrupt transition to online environments for everyday activities has highlighted vulnerabilities in the networks and tools we rely on¹⁴. The World Economic Forum has warned of the "inevitable cyberattack" due to the people's heightened dependency on the Internet and the resulting increase in potential attack vectors¹⁵. The ITU has acknowledged that "it is particularly at times like this that we need to ensure that our systems and networks are secure," offering a platform for sharing resources for governments and policymakers that are designed to help ensure communities remain connected safely and securely¹⁶.

Although it is an undoubtedly important aspect of the international Internet policy ecosystem, cybersecurity policy is a complex topic that can bear serious implications for access to information and other human rights. During the COVID-19 pandemic, government responses to cybersecurity threats have included disruptions or total shutdowns of Internet access¹⁷. In many of these cases, governments have characterized these cyber threats as efforts to spread false information, undermine public safety, or challenge national security.

Under international human rights law, freedom of expression may be subject to certain restrictions, including public health grounds; however, any such measures must be subject to principles of legality,

Pandemic/Okereafor/p/book/9780367610913

 ¹³ ITU 2021, Road to Addis<u>https://www.itu.int/en/ITUD/Conferences/WTDC/WTDC21/R2A/Pages/default.aspx</u>
 ¹⁴ Okereafor, Kenneth. 2021. Cybersecurity in the COVID-19 Pandemic, Rotledge <u>https://www.routledge.com/Cybersecurity-in-the-COVID-19-</u>

¹⁵ World Forum, June 2020. What COVID-19 pandemic teaches us about cybersecurity - and how to be prepared for the inevitable cyberattack. <u>https://www.weforum.org/agenda/2020/06/covid-19-pandemic-teaches-us-about-cybersecurity-cyberattack-cyber-pandemic-risk-virus/</u>

¹⁶ ITU, CYB4COVID 2020 <u>https://www.itu.int/en/action/cybersecurity/Pages/CYB4COVID.aspx</u>

¹⁷ Access Now 2021, Keep it on. <u>https://www.accessnow.org/keepiton/#problem</u>

proportionality, necessity and non-discrimination ¹⁸. In the case of combating the spread of misinformation, proportionate measures can and should require less intrusive means, such as promoting independent fact-checking and promoting education and media literacy. No cyber threat response outweighs the consequences of cutting off access to information for millions of people during a public health emergency. The United Nations Human Rights Council, in accordance with previous resolutions on the promotion, protection and enjoyment of human rights on the Internet, "unequivocally condemns Internet shutdowns and online censorship and calls on governments to cease such measures."¹⁹

Given the critical importance of the Internet in the circulation of information at local, national, and international levels, shutdowns or restrictions of the Internet cause concrete harm, especially among the most vulnerable communities. The UN Committee on Economic, Social, and Cultural Rights has emphasized that "information accessibility" is a critical component of the right to health²⁰. Access to information about COVID-19 is essential to preventing the spread of the virus, sharing best health practices, and promoting the uptake of vaccines. The right to access information, thus, is a matter of public health in the context of a global pandemic²¹.

Recommendations for Member States

• Keep connectivity at the center of the ITU agenda:

Although the pandemic has created new users and uses for the Internet, unconnected and underconnected communities are still at extreme risk, since they are less able to comply with social distancing measures. It is important to keep connectivity at the center of the ITU mandate, considering its irreplaceable role in determining technical standards and policy guidance for expanding access to telecommunications to almost half of the world's population that remains unconnected.

Promote efficient and inclusive models for spectrum management:

Emergency measures taken to address connectivity issues should not be centered exclusively on partnerships between governments and traditional telecommunication operators. Member States should acknowledge the roles of small, community, and non-profit operators in providing connectivity during the pandemic. When taken, emergency actions must have a clear justification based on strong evidence and be time-bound or subject to periodic review for renewal. Actions implemented during emergencies should offer equal opportunities in access to spectrum, resources, and infrastructure sharing for small, community, and non-profit operators.

¹⁸ UN OHCHR 2020. Emergency Measures and COVID-19: Guidance

https://www.ohchr.org/Documents/Events/EmergencyMeasures_Covid19.pdf

¹⁹ UN HRC July 2021. 47th Resolution on the promotion, protection and enjoyment of human rights on the Internet <u>https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/47/L.22</u>

²⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted 11 August 2020), UN Doc. E/C.12/2000/4, para 12(b)
²¹ Article 19 2020. Access to the Internet can be a matter of life and death during the coronavirus pandemic

https://www.article19.org/resources/access-to-the-internet-can-be-a-matter-of-life-and-death-during-thecoronavirus-pandemic/

• Adopt cybersecurity strategies that do not restrict fundamental rights:

Strategies aimed at promoting online security during the COVID-19 pandemic must respect fundamental human rights including privacy and access to information. Member States should consult other stakeholders, including civil society, in the development of cybersecurity policies and ensure that policies do not widen the margins for criminalization, monitoring, and restrictions to freedom of expression and access to information.